

Appl. No. : 09/869,229  
Filed : June 25, 2001

### REMARKS

Claims 1-14, 36-46, 53 and 54 are pending. Claims 3-14 and 41-54 have been amended to more clearly claim the invention. No new matter has been added herewith. Claims 56 and 57 have been added. Support for added claims 56 and 57 can be found throughout the Specification and specifically on page 33, lines 10-13. The Examiner has objected to the use of a hyperlink in the Specification. Thus, the hyperlink has been replaced by generic language explaining the reference to the webpage. Further the inconsistent subscripting in Claim 4 has been amended.

The changes made to the Claims and Specification by the current amendment, including ~~deletions~~ and additions, are shown herein with deletions designated with a strikethrough and additions underlined.

#### **Rejection under 35 U.S.C. §112, second paragraph**

The Examiner has rejected Claims 4, 5, 8-13, and 43-46 as being indefinite. More specifically, the cited claims are believed indefinite for the following reasons:

Claims 4 and 8 recite an assay device comprising a formula. Thus, Applicants have amended the claims to recite "the array is defined by the formula". Support for the language can be found in the Specification on page 6, line 13 and on page 8, line 13.

There is insufficient antecedent basis in Claim 5 for "disease". Thus, the claims has been amended to read "condition" which does have antecedent basis in Claim 1.

In Claim 8, the phrase "from 0 to 1" is unclear. Thus, Applicants have amended the claim to read "0 to 100". Support for the amendment can be found in the Specification page 11, line 14.

There is insufficient antecedent basis for "disease" in Claims 11-13. Thus, the claims have been amended to read "condition". There is antecedent basis for "condition" in Claim 1.

As a result of the above arguments and amendments, Applicants believe that the claims are now definite and respectfully request withdrawal of the rejection under 35 U.S.C. §112, second paragraph.

#### **Rejection under 35 U.S.C. §102(a)**

The Examiner has rejected Claims 1-7, 14, 36-42, 53 and 54 as being anticipated by Mendoza et al. (October 1999). However, the earliest priority date for the instant patent application of December 23, 1998 predates the publication date of Mendoza et al. In this regard, we enclose copies of the provisional applications from which the present U.S. application is

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based as Exhibits A and B. Both of these application were filed before Mendoza et al., evidencing that the instant claims are entitled to the earliest priority date of 23 December 1998. Further, the specification and claims of the above-identified patent application and exhibit B are substantially identical except that Exhibit B contains further experimental embodiments, such as an alternative sample treatment and an experimental example of an nitrocellulose-based antibody array which was taught in the Provisional but not actually experimentally produced. Thus, the priority applications provide support for the claims.

**Rejection under 35 U.S.C. §103(a)**

The Examiner has rejected Claims 1-7, 11-14, 36-42, 53, 44-46, and 54 under 35 U.S.C. § 103(a) as unpatentable over Mendoza et al. (October 1999) in view of Gallo et al (US005968513A, October 1999).

As discussed above, Mendoza et al does not qualify as prior art. Further Gallo alone do not support a showing of prima facie obviousness, because Gallo et al only teach a method of treatment of infections with recombinant stem cells expressing human gonadotropin. Gallo does not teach or mention arrays as taught and claimed herein.

**Conclusion**

In view of the foregoing amendments and remarks, Applicants request that the rejections under 35 U.S.C. sections 112, 102, and 103 be withdrawn. Should there be any remaining questions, the Examiner is respectfully requested to contact the undersigned at the telephone number appearing below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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